

PECK WILL LOSE RIGHT

The Kohala-Hilo Railway Franchise Cannot be Extended.

"I suppose that the only thing I can do, under the opinion of the Attorney-General," said Superintendent of Public Works yesterday, "is to notify the Kohala-Hilo railway people that I will not enforce the forfeiture clause of their franchise within a reasonable time after their failure to comply with the conditions, unless matters should develop wherein injury to the Territory would result by reason of the failure to declare such forfeiture. I have no power to grant them any specific time to raise money."

And, in effect, that works the end of the Kohala-Hilo railway enterprise. When Mr. Peck was given a hearing before the Governor not long ago, he stated distinctly that he wanted at least until the first of August to find out whether he could raise the funds necessary to finance the scheme. Under its charter, a forfeiture would be worked in April, and what Peck struggled for was a distinct assurance from the Superintendent of Public Works that, if he could show by the first of August that he could raise the money, that the charter would not be forfeited.

Governor Carter expressed himself as willing to do this, provided the Attorney-General found, upon consulting the authorities, that legal warrant existed for the extension. The Attorney-General has found that such warrant does not exist. And so, if a road is built from Hilo to Kohala, it must now be built under the provisions of the Dillingham franchise. The opinion of the Attorney-General sets forth:

Honolulu, T. H., March 2, 1905.
Honorable C. S. Holloway, Superintendent of Public Works, Territory of Hawaii—

Dear Sir: In answer to your request of February 17th, as to whether you had the right to extend the time of the franchise granted to the Kohala and Hilo Railway Company, beyond that stated in the agreement between the said company and the Minister of the Interior on the 26th day of June, 1899, I would reply as follows:

This franchise was granted during the transition period, which allowed the Minister of the Interior to grant franchises by and with the consent of the Executive Council, and this franchise in question was so granted and approved by President McKinley, under the rulings from Washington as to such matters. This power has now been taken away from the Minister of the Interior, and franchises must now be granted by the local Legislature with the proviso that special and exclusive franchises must also have the consent of Congress. It is, therefore, out of the question for the Superintendent of Public Works to, at this time, amend and alter the terms of a franchise by agreement with the other party thereto, as, by doing so, he would be granting a new franchise to the extent of the amendment or alteration, and this power has been taken from him.

The question remains whether the superintendent can extend the time of said corporation within which it is to perform a certain act. In this particular, the contract reads as follows:

"And if the said corporation shall not have completed the said railroad or railroads and branch lines within three years from the date of the approval of the location as aforesaid, then the said Minister of the Interior shall have the right and privilege to declare forfeited the franchise of said company to construct the said railroad or railroads as aforesaid; provided, however, that such forfeiture shall not take effect until written notice that such forfeiture is to be enforced, is served upon the corporation; and further provided, that nothing herein contained shall be construed to prevent the said corporation from hereafter, from time to time, locating, constructing and operating other branch lines in said districts, subject to the approval of the Minister of the Interior."

There is no other proviso whereby the Minister of the Interior or the Territory of Hawaii is allowed to extend the time of said corporation in which to complete its work, except upon unforeseen contingencies specified in the contract, none of which has arisen.

I understand the contention is made, however, that this provision as to forfeiture is optional with the Minister of the Interior, and that, therefore, they have unlimited time, within his discretion, to complete the road and within which to do and complete the various works set forth. With this view, however, I do not wholly agree. While the terms of the contract are vague and uncertain, and there is ground for the contention that the Minister of the Interior may use his discretion as to whether he shall declare a forfeiture upon the failure of the company to strictly comply with the terms of its contract, on the other hand, the Minister of the Interior is acting, not for himself, but for the Territory of Hawaii, and I do not believe it would be right or lawful for him to abuse the discretion vested in him under this section by extending such period indefinitely, or by making any new terms with the corporation, in view of which he agrees to waive said forfeiture. There is also serious question, it seems to me, how far, in a public franchise of this kind, the Minister of the Interior can waive forfeiture, in view of the fact that he no longer has power to grant, change, or amend such franchises.

My opinion would be that the most you could do under this contract would

be to inform the Kohala and Hilo Railway Company that you will not enforce the forfeiture within a reasonable time after their failure to comply with the conditions, unless matters should develop wherein injury to the Territory of Hawaii would result by your failure to declare such forfeiture. This, it seems to me, is the limit to which your discretion could go, and we are straining the construction of the franchise, in my opinion, to go as far as this.

Yours very truly,
(Signed) L. A. ANDREWS,
Attorney-General.

LOUIS ADLER'S WILL AND OTHER MATTERS

Mrs. J. J. Harvey, nee Adler, petitions for probate of the will of the late Louis Adler, and that David Dayton be appointed administrator of the estate. The estate is valued at \$3,000, consisting of a leasehold in Vineyard street and cash in the Bank of Hawaii, though the will says:

"The estate consists of the following: 115 shares of stock in Ewa plantation, cash in the Bank of Hawaii, cash on hand, leasehold on five cottages situated on Vineyard street near Miller, Honolulu, Oahu."

The will leaves the estate, share and share alike, to Rose Adler, now Mrs. Jas. Jordan Harvey; Lizzie Adler, now Mrs. Ward Adams Rowell; and Louis Adler, only son of the testator, who also is bequeathed his father's gold watch and chain. The will was executed on April 7, 1903, in the presence of H. J. Teel and E. A. Miller.

Wm. G. Rogers, a creditor, petitions that H. G. Middleitch be appointed administrator of the estate of Harriet P. Taylor, late of California, who died at the Volcano House. The estate consists of personal property of about the value of \$443.95.

W. O. Smith, at the request of the heirs certified from San Francisco, petitions for auxiliary letters of administration with the will annexed on the estate of the late Clara T. Morrison in this Territory.

MAGOON BRINGS HIS THIRD LIBEL SUIT

J. A. Magoon wants another \$30,000 from the Hawaiian Star Newspaper Association, two-thirds thereof as punitive damages for libel. This brings the aggregate of Mr. Magoon's claims, on account of his private and professional name and fame, filed thus far this week up to ninety thousand dollars. The Star's new suit was entered yesterday, the complainant filing fifteen pages of typewriting. It quotes as cause of action the Star's new and old references, in its issue of Tuesday, to the charge filed against the plaintiff in the Supreme Court by Sidney M. Balou, attorney, for which the latter is himself a defendant in a libel suit for \$50,000.

ALEX. LINDSAY WILL SUCCEED JUDGE GEAR

★ All other aspirants may take ★
★ down their lightning rods. Those ★
★ whose friends have annoyed them ★
★ by putting their names forward for ★
★ the place may avoid the trouble of ★
★ writing to the papers to disclaim ★
★ candidacy. Alexander Lindsay, Jr., ★
★ the present First District Magis- ★
★ trate of Honolulu, will be appoint- ★
★ ed by President Roosevelt as Sec- ★
★ ond Judge of the First Circuit ★
★ Court to succeed George D. Gear, ★
★ whose term is just expiring. Yes- ★
★ terday the Advertiser was inform- ★
★ ed that Lindsay's name had been ★
★ cabled to the President by Gov- ★
★ ernor Carter.

A public reception for Hawaiians will be held by Prince and Princess Kawannakoa, at the Campbell home, Emma street, from 10 to 12 o'clock Saturday morning, March 11, the occasion being the celebration of the birthdays of their children Kapiolani and Kalekua.

A WONDERFUL DISCOVERY.

This is the age of research and experiment, when all nature, so to speak, is ransacked by the scientific for the comfort and happiness of man. Science has indeed made giant strides during the past century, and among these—by no means least important—discoveries in medicine comes that of THERAPEUTIC.

This preparation is unquestionably one of the most genuine and reliable Patent Medicines ever introduced, and has, we understand, been used in the Continental Hospitals by Ricord, Rostan, Jobert, Velpeau, Malgouyres, the well-known Chassaigne, and indeed by all who are regarded as authorities in such matters, including the celebrated Lallemand, and Roux, by whom it was some time since uniformly adopted, and that it is worthy the attention of those who require such a remedy we think there is no doubt. From the time of Aristotle downwards, a potent agent in the removal of these diseases has (like the famed philosopher's stone) been the object of search of some hopeful, generous mind; and far beyond the mere power—if such could ever have been discovered—of transmuting the baser metals into gold is surely the discovery of a remedy so potent as to replenish the falling energies in the one case, and in the other so effectually and safely to expel from the system the poisons of acquired or inherited disease in all their protean forms as to leave no taint or trace behind. Such is the New French Remedy THERAPEUTIC, which may certainly rank with, if not take precedence of, many of the discoveries of our day, about which so little ostentation and noise have been made, and the extensive and ever-increasing demand that has been created for this medicine wherever it is cast into circulation all those questionable remedies that were formerly the sole reliance of medical men.—Diamond Fields Advertiser, Kimberley.

HOUSE TAKES THE LEAD OF THE THIRTEENTH DAY

The House took the lead in the dispatch of business yesterday, and for the first time this session had cleaned up everything on the Speaker's table when the hour came for the noon recess. And at that there was a little flurry of oratory, Mr. Aylett of Oahu contributing something rather more choice than usual to the gaiety of nations in his strenuous objection to the use of yellow paper by members in drafting resolutions. It was but a flurry, and Mr. Aylett lost on the play, but it was worth while to the gallery while it lasted. More than that, the House began an inquiry into militia affairs that may yield results.

The Senate made a move in the interest of sanitation in the passage of the Dickey expectation bill, which is practically the same as the law now in almost universal application in the cities of the mainland. Also, the Senators passed the bill which will put power in the hands of the Territorial officials to collect the taxes which have heretofore largely gone delinquent from men who hold smaller places under government, and put the Sunday law in the hands of a special committee with the only Democrat in the Chamber as its chairman. This may or may not be good politics. The committee has one member from each island, and the bill referred to it is the McCandless measure, which provides for a Sunday very much after the European manner.

LEGISLATURE—THIRTEENTH DAY.

THE SENATE.

The Senators were invited by the President of the Board of Health to visit the insane asylum yesterday—to look at some uninvited machines, perhaps—and rejected the committee report that was intended to kill the Dickey anti-spitting bill. Instead of being laid on the table, the Dickey sanitation measure was taken up, at the instance of its owner, and being read section by section, passed second reading and will come up for its final passage on Friday.

The bill had been raised from the table early in the day's session, on motion of its introducer, who said that the Board of Health had touched upon the subject in its report, and put upon the order of the day. A little later the Health Committee, through Kalama, reported adversely on the bill, recommending that it be laid on the table permanently.

Dickey got the floor on the motion to adopt the report, and made a strong plea for his favorite measure. It was a bill, he said, in the interest of sanitation. He was perfectly willing to have that part of it relating to tuberculosis stricken out. The Board of Health had taken the ground that that part could not be enforced. And he himself asked the committee to strike out that. But in basing their entire report upon that section, and trying to kill the bill altogether on account of that, he did not think the committee had treated him quite fairly. There should be a difference made between spitting on sidewalks and in the streets. The distinction should be made, not only in the interest of public health, but of common cleanliness. He would, therefore, move that the bill be taken up, section by section, and this carried, the report of the committee being thrown out.

PROVISIONS OF THE BILL.

The bill, as it was finally passed, makes it unlawful to spit on any sidewalk, street or road crossing, or on the floor of any street car, public building, theater, hotel or place of public resort. A penalty of five dollars for each offense is assessed.

A number of communications relative to action on joint resolutions were received from the House at the opening of the session.

House Bill 43, to regulate the pay of laborers, passed first reading by title. Senator Wilcox introduced a bill to provide for the creation of a Board of Archives. Passed first reading and sent to the Printing Committee.

From the Committee on Education, Hayseiden reported favorably on the Hilo High School Bill, but recommended that \$50,000 be appropriated for the erection of the building and \$9,000 for the pay of teachers annually. The report was taken up with the bill a little later in the day, and the whole matter went to the Loan Committee.

Senate Bill No. 8, amending section 1815 of the Revised Statutes of Hawaii, was reported favorably by the Judiciary Committee, and passed second reading. It will come up for third reading on Friday.

Senate Bill No. 42, which is the act to compel Territorial employees to pay their taxes, was amended by the Public Expenditures Committee to read that the auditor could hold up all of a delinquent's salary until his taxes were paid, and in that form passed second reading on a call of the ayes and nays, but not without strenuous objection. The vote was 10 to 5, as follows:

Ayes—Achi, Bishop, Dickey, Dowsett, Gandall, Hayseiden, Hewitt, Isenberg, Paris, Wilcox—10.
Noes—Brown, Kalama, Lane, McCandless, Woods—5.

FILING OF MAPS.

The regular order now came on the third reading of Senate Bill 84, providing for the filing of surveys and maps of lands with the Registrar of Conveyances. Bishop questioned the sense of the bill, and McCandless made a somewhat extended speech in favor of amending it so that the government would not be responsible for the accuracy of the maps so filed. But he wanted to retain the section providing that such maps should be accepted as evidence in courts of law.

THE HOUSE.

"You disclaim responsibility for the accuracy of the maps," said Dowsett, "and then you want them accepted as evidence."

Achi said their acceptance would be subject to the laws of evidence, and Paris made a speech expressing doubt whether the bill should pass at all. Bishop moved to strike out the section making maps acceptable as evidence, and the motion carried. The bill was then amended so as to preserve the sequence of the sections, and was passed, only Brown and Paris voting against it.

Senate Bill 35, amending the Revised Laws relative to the duties of the Registrar of Conveyances, passed third reading, only Dickey and McCandless voting against it.

WANTS HER HOME.

Brown presented a petition from a native woman of Hilo asking that she be awarded the land now occupied by her as a home and that the said land be declared to belong to her. The land comprises 2½ acres, and was granted to D. Castle by the Court of Land Claims. The petition went to the Judiciary Committee.

Senate Bill No. 61, to amend the registration laws, on second reading, went to the Judiciary Committee.

Senate Bill No. 60, to amend Section 2633, 2684 and 2686 of the Revised Statutes, on second reading went to the Judiciary Committee.

Senate Bill No. 59, to fine violators of the market ordinance one dollar, on second reading went to the Judiciary Committee.

Senate Bill No. 51, to regulate the admission of attorneys and counselors at law, passed second reading and went to the Judiciary Committee.

Senate Bill No. 50, to repeal Sections 1, 2, 3, 4 and 5 of the Session Laws of 1898, passed second reading, and went to the Public Lands Committee.

Senate Bill No. 40, the McCandless Sunday law, was read second time by title and went to a special committee of one from each island, on motion of Wilcox.

The committee, as announced by President Isenberg, consists of Woods, Hayseiden, Bishop, Lane and Wilcox. "It will be a good Democratic Sunday law with that chairman," remarked a Senator when the committee was announced.

AFTERNOON SESSION.

At the afternoon session the following report from the Judiciary Committee was taken up with Senate Bill 46. In presenting its report, which was in the main a favorable one, the committee says:

"The object of the bill is to give the

A LINGERING COUGH

The cough that holds on in spite of all remedies needs energetic and above all thorough treatment. A mere cough mixture won't do. Root out the cold that causes the cough.

How? Scott's Emulsion. Why Scott's Emulsion?

Because it stops the irritation, soothes the tissues and heals the affected membranes.

When? Right away. Scott's Emulsion begins to help with the first dose.

People who have used Scott's Emulsion will not be satisfied with any of the numerous substitutes that are offered in the form of wines, extracts, cordials, etc. When life and health are at stake it is unwise to experiment with unknown and untried preparations.

We'll send you a sample free upon request.
SCOTT & BOWNE, 409 West 42nd Street, New York

landlords a chance to sue the lessees, either at the district where the land is situated, or at the district where the lessee resides, relating to summary proceedings to recover possession of lands.

"According to the laws of the land now, in cases of this kind, the landlords are forced to bring suit where the lands are situated; but in many cases it was found that the lessees were outside of the district where the lands are situated; in those cases the landlords have no remedy except to go into Circuit Courts, which is an expensive one."

The bill passed second reading, and will be read for the third time on Monday.

The tax bill for counties was reported from the Printing Committee, and assigned to the Ways and Means Committee.

McCandless introduced a bill relating to the commutation of the rights of the government in lands awarded to quiet title, and another relating to school lands. Both passed first reading, being referred to the Printing Committee, and the Senate adjourned.

THE HOUSE.

It was Rep. Aylett of the Fifth who stirred up matters in the House of Representatives yesterday for a few minutes, otherwise the lower chamber would have devoted an hour and a half to the dull monotony of doing business, along business lines. As it was, Aylett gave everyone a breathing spell. He objected to members submitting resolutions on yellow paper and he voiced his objection in the indignant tones which Warsaw's last champion must have used when he from her heights surveyed wide o'er the field a waste of ruin laid. "Better death than yellow paper," said Aylett of the Fifth, in effect and Speaker Knudsen was relentless enough to rule the honorable gentleman's objection out of order.

As a matter of fact Aylett was practically but not literally, right from the Hawaiian standpoint. The rules, in English, call for the use of "letter or cap paper" for resolutions, "cap" being merely the abbreviation which means "fool's cap size." Owing to the lack of a word to indicate fool's cap the Hawaiian translators of the rules call that particular paper "pepa lolo," or "lawyers' paper," which may, of course, make other people turn blue, or even yellow, but is not yellow itself.

The English version of the rules has to stand though and, under a perfectly correct ruling, members will be able to use yellow paper or green paper, or black paper or pink paper with purple polka dots on it—in fact, any sort of old paper, so long as it is cap size.

BERGER'S SMALL BILL.

It was Bandmaster Berger who first awakened the House yesterday by his quaint answer to the request of the House for a report of the band's incidental expenses.

"I must state," wrote Capt. Berger, "that the band had no incidentals whatsoever. It has been stricken out when all got 20 per cent down so the band has to make the best of it, but hopes that the Legislature will restore us the incidental appropriation to buy new reeds, strings, new music, repair instruments, car fare and express hire for long distance service and we will thank them for it."

Chief Justice Frear filed a report showing \$432.30 for expenses of the Judiciary Department for six months and \$509.67 for stationery and incidentals.

HOW THE FUND STANDS.

In reply to a request from the House Superintendent Holloway of the Public Works Department submitted a long report giving details of the different items under the following heads:

Total appropriations under the loan act\$2,397,27 75
Total expenditures1,631,735 89
Total unexpended1,365,541 86
Total reserved for contracts. 448,476 01

Chief Engineer Thurston of the Honolulu Fire Department submitted a report showing an expenditure of \$4,126.27 for incidental expenses. The principal single item was one of \$1525.01 for horse feed.

President Pinkham of the Board of Health wrote inviting the members of the House of Representatives to visit the Insane Asylum.

Rep. Lewis introduced a bill to protect life and property from injuries resulting from the operation of steam boilers and engines and to provide for the licensing of engineers. It was read by title for the first time.

AFTER THE "MILISH."

Rep. Fernandez introduced an important resolution to the effect that as the rumor was current to the effect that the money appropriated for the military department had been spent for "booze and high jinks" and as this had been published a Special Committee should be appointed to examine the accounts of the Military Department and report on the same and that the commission have power to subpoena officers and other witnesses.

It was agreed that a committee of three shall be appointed by the Speaker.

MORE RESOLUTIONS.

Other resolutions introduced were: For \$3,400.00 for macadamizing River street from King to Vineyard. (Kalelopu).

For \$10,000, extending River street from Vineyard to School street. (Kalelopu).

For \$2000 for a school house at Kailihikal. (Mahikoa).

For \$6000 for a school house and teacher's cottage at Papiia. (Mahikoa).

For \$20,000 for the extension of Vineyard street from Liliha to Insane Asylum road. (Broad).

For \$5000 for maintaining and improving Moheohe Park, Hilo. (Lewis).

For \$10,000 for purchasing balance of right of way, Bridge street, Hilo. (Lewis).

For \$3000, completing King street, Hilo. (Lewis).

For \$25,000, road from Honolulu to Paauhau. (Lewis).

WHO'S FAULT IS IT?

A Local Occurrence That Will Interest Many Readers in Honolulu.

If, when a fog horn warns the mariner to sheer off the coast, he still hugs the shore and wrecks upon it, whose fault is it? If the red switch light it up and the engine driver deliberately pulls ahead and pitches into another train, blame the driver. If a careless workman will in spite of warning try to find out how many teeth a buzz saw has, and the saw tries to find out how many fingers the workman has, blame the workman, not the saw. If a sick man knows that a certain medicine is doing him good, and he carelessly neglects to use it, blame the man, not the medicine. If Honolulu people who have kidney complaint and backache will not take Doan's Backache Kidney Pills when they are endorsed by scores of citizens, blame the people, not the endorsers. Read this endorsement:

"Mr. John E. Bush of Punchbowl st. this city, is attached to the Hawaiian Interpretation staff at the Supreme Court. He says: 'I had kidney trouble, and, acting on the recommendation of a friend, who had tried your invaluable remedy, I got some of Doan's Backache Kidney Pills at Hollister Drug Co.'s store. They were just as beneficial to me as they had been to my friend. It is well the virtues of these pills should be made known, for they really are an excellent medicine for kidney trouble.'"

Doan's Backache Kidney Pills are for sale by all dealers. Price 50 cents per box, or sent by mail on receipt of price by the Hollister Drug Co., Honolulu, wholesale agents for the Hawaiian Islands.

Remember the name—DOAN'S—and take no other.

For \$15,000, for High School building at Hilo. (Lewis).

The following bills were transmitted to the House from the Senate:

Relating to the bonds of public officers.

Providing for indexing the records in the office of the Registrar of Conveyances.

WILL HAVE LUNCH.

An invitation was received from the Honolulu and Hoola Lahui Society requesting the company of the Speaker and members of the House at lunch at the Kapoli Maternity Home on Friday, March 3. The invitation was accepted.

The Finance Committee reported favorably on Coelho's bill to encourage diversified industries.

Chairman Holstein of the Police Committee reported favorably on the application for the appointment of a Deputy Sheriff for Honouliuli, Maui.

INTERNAL IMPROVEMENTS.

Reports of the Committee on Public Lands and Internal Improvements were submitted by Chairman Mahelona on the following matters:

The petition of North Kohala asking for \$50,000 for different road works was recommended tabled, a former petition covering the ground.

The petition for \$15,000 for a courthouse and jail at North Kona was recommended and referred to the County Committee.

The petition for \$35,000 for a wharf at Kailua bay was recommended tabled, as the present wharf is good.

The committee reported favorably on the petition for \$2500 for a road in North Kona near Kona Orphanage.

The application for \$10,000 for the Palolo road was endorsed.

The petition for \$15,000 for courthouse and jail in the Third Judicial Circuit was referred to the County Committee.

The committee recommended the appropriation of \$35,500 for roads in South Kohala, rejected; sums of \$2500 for a wharf at Kawaihae and \$3000 for a roller. It recommended that the application for \$2400 for a doctor in South Kohala go to the Health Committee.

The resolution for \$39,000 for roads in North Kona was reported on adversely.

A petition was received for the appropriation of \$2500 for macadamizing Pali avenue.

The House finished its business at 11:30 and adjourned until this morning, the Standing Committees being busy yesterday afternoon.

PROPERTY-OWNERS REQUEST EXTENSION

A petition from property owners on the Queen street extension, asking the granting of the request of the Rapid Transit Company to extend its tracks along the extension between Nuuanu stream and the Iwilei road be granted, has been received by Governor Carter. "I understand," said the Governor, "that the principal aim of this proposed extension of the line is not passenger traffic, but the transportation of oil. If the track is laid on the proposed stretch of track, side lines can run up to the fuel oil pipes and electric oil tank cars can run right up to these and get filled easily and quickly. These tank cars will have a capacity of about seventy barrels."

At present the Rapid Transit Company will use the oil for its own consumption only in its power house on Alapai street. However, later on, when the Government pumps begin to use fuel oil the Rapid Transit cars can supply these also.

MAKES VERY GRAVE CHARGE.

(Continued from page 1.)

ton that I would not pay the money and that he would have to sue me if he wanted to get it.

T. E. RICHARDSON.
"I have seen the statement of T. E. Richardson," said Attorney-General Andrews last night. "The same statement, in effect, has been made to me, and the papers in a criminal case against Fullerton are now being prepared in my office. The man will probably be arrested today."